

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 HERBERT LUTZ,

11 v.  
12 Plaintiff,

13 SAFEWAY INC,  
14 Defendant.

CASE NO. C21-1255-JCC-MLP

MINUTE ORDER

15 The following Minute Order is made by direction of the Court, the Honorable John C.  
16 Coughenour, United States District Judge:

17 Plaintiff has filed a notice of voluntary dismissal under Federal Rule of Civil Procedure  
18 41(a)(1)(A)(i). (Dkt. No. 16.) That rule allows a plaintiff to unilaterally dismiss a case without  
19 prejudice if the defendant has not yet served an answer or a motion for summary judgment. But  
20 here, Defendant has already filed an answer. (Dkt. No. 4.)

21 Under such circumstances, Plaintiff's motion is properly treated as one seeking dismissal  
22 under Rule 41(a)(2), which—unlike dismissal under Rule 41(a)(1)—requires a court order. A  
23 court will grant such a motion unless a defendant shows that it will suffer legal prejudice from  
24 the dismissal. *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). “[L]egal prejudice” means  
25 ‘prejudice to some legal interest, some legal claim, some legal argument.’” *Id.* at 976 (quoting  
26 *Westlands Water Dist. v. United States*, 100 F.3d 94, 96 (9th Cir. 1996)).

1 Accordingly it is hereby ORDERED that: (1) Plaintiff's motion for voluntary dismissal is  
2 RE-NOTED to July 8, 2022; (2) no later than July 1, 2022, Defendant must file a notice stating  
3 whether or not it opposes Plaintiff's motion for voluntary dismissal; and (3) if defendant opposes  
4 the motion, it must file its opposition by July 6, 2022.

DATED this 29th day of June 2022.

Ravi Subramanian  
Clerk of Court

s/Sandra Rawski  
Deputy Clerk